

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RACHEL YOUNGER, Individually and as
Administrator of the Estate of NATHANIEL
YOUNGER,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE COMPANY,
ZURICH LIFE INSURANCE COMPANY and UBS
FINANCIAL SERVICES, INC.

Defendants.

Civil Action No.: 11-civ-1173 (TPG)

NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that defendant Zurich American Insurance Company (“Zurich American”), through its attorneys White and Williams LLP, upon a certification of Andrew I. Hamelsky, dated May 5, 2011, and a memorandum of law, shall move before this Court at a time to be determined by the Court, before the Honorable Thomas P. Griesa, U.S.D.J., for an order providing that (1) the motion is granted; and (2) the complaint is dismissed pursuant to Fed. R. Civ. P. 12(b)(6), on the basis that the claim for relief is preempted by ERISA; or (3) in the alternative, (a) the complaint is recharacterized to assert solely a claim pursuant to 29 U.S.C. § 1132(a)(1)(B), (b) the complaint’s demand for a jury is stricken, and (c) “Zurich Life Insurance Company” be stricken from the caption and complaint in this action.

Date: May 5, 2011

Respectfully submitted,

s/ Andrew I. Hamelsky
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